IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14713 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRAMBHAI LILABHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14713 of 2003

Mr. YN Oza, with MR BP GUPTA for Petitioner.

Mr. VM Pancholi, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2004

ORAL JUDGEMENT

The petitioner, working in cadre of Deputy Mamlatdar in Civil Supplies Department under Collectorate, Gandhinagar, is placed under suspension following a prosecution under Prevention of Corruption Act. As per that prosecution case, one Mr. D.A. Shah, respondent No.4 herein, working as District Supply Officer, was also involved in the alleged case of demand

and acceptance of bribe. However, as it appears, after the investigation, sanction for prosecuting Mr. Shah has not been granted and his suspension has also been revoked by the Government. The petitioner is aggrieved by the fact that suspension of respondent No.4 has been revoked by the Government and sanction to prosecute him is not given, as against sanction being given to prosecute the petitioner, and he being continued under suspension. According to the petitioner, this is a pick and choose practice adopted by the State which is in violation of right to equality guaranteed under Article 14 of the Constitution of India. He has approached this Court praying for a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 9th October 2002 passed by respondent No.2 suspending the petitioner and for a further direction of respondents to permit the petitioner to discharge his duties as if no order of suspension was passed at all.

2. Learned Senior Advocate, Mr. AD Oza, appearing with Mr. Gupta for the petitioner, submitted that a partial treatment is being meted out to the petitioner. If the prosecution case is seen, prima facie, it is clear that involvement of respondent No.4 is of a higher degree than that of the petitioner. Even in the opinion of the Investigating Officer it is a case worth prosecuting respondent No.4 also and despite that, Gujarat Vigilance Commission has not recommended for prosecution and State has refused to give sanction for prosecution and has revoked the suspension of respondent No.4 even prior to the opinion of the Vigilance Commission. This discriminatory treatment has resulted into continuance of the petitioner under suspension for no reason. Relying on the decisions of the Apex Court in the matter of T.V. Choudhary Vs. Chief Secretary, Government of Andhra Pradesh And Another (1987) 3 SCC 258. Mr. Oza submitted, that if the Court is, prima facie, satisfied that plea is substantiated by the record produced by the Government it is competent to advise the Government to take similar adverse action against equally other culpable officers also, otherwise it would revoke the adverse order made against the aggrieved officer. Mr. Oza has also relied on decision in the case of K. Sukhendar Reddy Vs. State of A.P. and Another, as reported in 2000(1) SLR Page 23 wherein it was observed that the Government cannot be permitted to a selective suspension. It cannot be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy would be taken.

Mr. Oza submitted that a very similar situation has arisen in this case where the Government has continued suspension of the petitioner and has revoked suspension of respondent No.4 who is senior officer and whose role is of a greater degree in the corruption case and therefore this petition may be entertained favourably and the Government be directed to revoke the suspension of the petitioner.

3. Learned AGP, Mr. Pancholi, submitted that right to equality has to be considered in positive sense in positive matters. In illegality, even if it is committed, equality cannot be claimed and a mistake or an illegality cannot be permitted to continue under a protection umbrella of Article 14. He has relied on decision of the Apex Court in the case of State of Bihar and Others vs. Kameshwar Prasad Singh and Another., etc. reported in 2000 (9) SCC 94, wherein it is observed that equality is a positive concept and cannot be in force in a negative manner. Wrong order or judgment passed in favour of one person would not entitle to claim similar benefits, and in light of these observations (though in a matter relating to fixation of seniority), Mr. Pancholi submitted that the petitioner cannot claim the benefit of Article 14.

Apart from this, it was contended that, as the matter stands today, a Report under Section 169 of Cr.P.C. has been filed before competent Special Court and has been accepted by it against respondent No.4, whereas petitioner has been chargesheeted. Therefore, it cannot be said that petitioner and respondent No.4 are equally situated or respondent No.4 is worse situated. It is also contended that the petitioner has approached this Court for quashment of the complaint against him and a coordinate Bench is seized of the matter where notice has been issued and interim relief has also been granted. The Court has also issued a notice to show cause why appropriate orders directing the sanctioning authority to accord sanction to prosecute accused No.2 (respondent No.4 herein) be not passed. Mr. Pancholi, therefore, submitted that the questions of non-prosecution of respondent No.4 and non-granting of sanction are seized of by that coordinate Bench of this Court and therefore this Court may not entertain this petition.

4. Learned Advocate, Mr. Chetan Pandya for respondent No.4 submitted that the role attributed to respondent No.4 by investigating agency has been considered by a competent authority, like Vigilance Commission and thereafter prosecution is not recommended.

Government has also considered and sanction is not given and that may not be made a subject matter of issue before this Court in this petition.

5. Having regard to rival contentions, this Court has to examine whether the petitioner can pray for a direction for revocation of his suspension on ground of revocation of suspension of respondent No.4, asserting right to equality.

6. It would be appropriate to note, at this stage, that it would not be open or proper for this Court to examine the prosecution case, vis-a-vis the petitioner and respondent No.4 and weigh them inter-se. It is for the Government to decide whether to grant sanction or not and the question, whether Report under Section 169 filed by the Investigating Officer and duly accepted by a Court of competent jurisdiction, is proper or not cannot be gone into by this Court while examining this petition. Fact remains, that respondent No.4 has not been prosecuted and sanction has not been given. Against that, the petitioner is continued under suspension and a chargesheet has been filed against him. It is not open for this Court to examine whether there is a case for discharge of the petitioner or quashment of the complaint. In fact, another coordinate Bench of this Court is seized of the issue. Under the circumstances, what emerges is a hard fact that petitioner is facing a prosecution and he is chargesheeted, whereas respondent No.4 is not facing prosecution or is he chargesheeted. As on today, when this Court is deciding this petition, the two, therefore, cannot be considered at par. There cannot be any two opinions about the view expressed by the Hon'ble Apex Court in the cases of T.V. Choudhary, and K. Sukhendar Reddy (Supra), but considering the factual scenario, the principle laid down therein cannot be squarely applied to the facts of the present case. When the petitioner, at this stage, is found to be facing charges of corruption (rightly or wrongly, which can be decided by a Criminal Court), the respondent cannot be directed to revoke the suspension of the petitioner because suspension of respondent No.4 has been revoked who is not facing any criminal charges (rightly or wrongly).

7. This Court, therefore, is not inclined to exercise its discretionary writ jurisdiction to give directions, as prayed for by the petitioner.

However, it would be just and proper to observe and legitimate to expect the respondent authorities to

consider the question of suspension of the petitioner, in light of decisions referred to hereinabove in the matters of T.V. Choudhary, and K. Sukhendar Reddy,once petition preferred by the petitioner for quashment of complaint is conclusively decided by this Court, wherein notice is also issued to the Government to show cause why appropriate order directing the sanctioning authority to accord sanction to prosecute present respondent No.4 be not passed. Eventually, the case of the petitioner and respondent No.4 may or may not come at par, depending upon the order that may be passed. With these observations, the petition stands dismissed. Notice is discharged. No costs.

[A.L. Dave, J.]

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